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SUBJECT: INTERNATIONAL MARITIME ORGANIZATION (IMO): REPORT OF THE TWENTY-EIGHTH CONSULTATIVE MEETING OF CONTRACTING PARTIES TO THE LONDON CONVENTION, LONDON, OCTOBER 30 - NOVEMBER 3, 2006.

1. SUMMARY: The combined annual meeting for both the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the 'London Convention') and the 1996 Protocol to the London Convention (the 'London Protocol') took place in London, October 30 to November 3, 2006. Parties to the London Protocol adopted an amendment that allows for the sub-seabed sequestration of carbon dioxide. Essentially, the amendment adds carbon dioxide streams intended for sequestration as a material that can be considered for disposal into a sub-seabed geological formation, if the stream consists "overwhelmingly" of carbon dioxide and no wastes or other matters are added for the purpose of disposal. The amendment was approved by vote after a lengthy debate, with five abstentions and all other votes in favor. The United States, not a party to the Protocol, could not vote but advocated in favor of allowing carbon sequestration. This amendment will provide an additional mechanism by which to combat global climate change and ocean acidification. Greenpeace International's assertion that the U.S. Navy's creation of an artificial reef using a former aircraft carrier was contrary to the aims of the London Convention was refuted by the U.S. delegation, who explained that appropriate actions were taken when creating the reef to control sources of marine pollution and to safeguard the environment. The meeting also discussed the creation of a compliance mechanism that needs to be in place by March 2008. A decision was taken to establish a standing compliance group of 15 members plus observers. The meeting agreed that a compliance working group will meet for two days in November 2007 in order to work out the details of the mechanism. U.S. ratification of the London Protocol before that time would allow us to participate fully and influence the format and function of the compliance mechanism. END SUMMARY.

2. Overview and Status of London Convention and Protocol- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the London Convention) established a first-ever global regime for the protection of the marine environment from pollution caused by ocean dumping and incineration at sea. It now has eighty-one Parties. The United States became a Party in 1975.

3. The 1996 Protocol to the London Convention (the London Protocol), a free-standing treaty, represents the culmination of an intensive effort to update the Convention to reflect current views on protection of the ocean and scientific improvements in environmental assessments. The Protocol is intended to eventually supersede the original London Convention. Unlike the London Convention, which lists substances that may not be dumped, the Protocol prohibits ocean dumping of any waste or other matter except for those specifically allowed to be considered for dumping (a

'reverse list'). The text of the Protocol was adopted by Contracting Parties to the London Convention parties in 1996, and the United States signed the Protocol in 1998. The Protocol entered into force on March 24, 2006. Currently 30 states are Parties to the 1996 Protocol, with at least nine more (including the United States) actively working towards accession.

14. CO2 Sequestration Amendment to 1996 Protocol - The most significant action taken at the meeting was the adoption of an amendment to the Protocol that would amend Annex 1 (the "reverse list") to explicitly allow sequestration of "carbon dioxide streams from carbon dioxide capture processes," provided that: (1) the sequestration "is into a sub-seabed geological formation," (2) the CO2 streams to be sequestered "consist overwhelmingly of carbon dioxide," though they may contain "incidental associated substances derived from the source material and the capture and sequestration processes used," and (3) no wastes or other matter are added for the purpose of disposal. The amendment would not allow sequestration in the water column.

15. The text of the amendment as adopted was the same as that proposed by Australia, co-sponsored by France, Norway, and the United Kingdom, and supported by Spain. Its adoption, however, followed lengthy debate both in a working group (chaired by Canada) and in plenary, and a roll call vote. The following twelve Contracting Parties to the Protocol voted in favor: Australia, Canada, France, Germany, Mexico, New Zealand, Norway, Saudi Arabia, Spain, Sweden, United Kingdom, and Vanuatu. Belgium, China, Denmark, Egypt, and South Africa abstained. The United States (not a Contracting Party to the Protocol) made an intervention supporting the amendment.

LONDON 00000894 002 OF 004

16. Delegations in favor of adoption of the amendment noted generally that CO2 sequestration in sub-seabed geological formations is one option in a portfolio of measures needed to combat ocean acidification and climate change; that a number of promising marine CO2 sequestration projects are under consideration around the world (notably UK and Norwegian projects in the North Sea and projects off the coast of Australia); and that a failure of the Protocol to elaborate the legal framework would hinder commercial-scale implementation of CO2 sequestration in sub-seabed geological formations. The sponsors of the amendment, especially Australia, Norway, and the United Kingdom, were most vocal in its support.

17. Delegations opposed to the amendment claimed that the scientific uncertainties about site selection, leakage rates, long-term monitoring, and carbon purity argue for developing specific guidelines for assessment of CO2 sequestration proposals before deciding on the proposed amendment. Greenpeace International also opposed the amendment, drawing attention to the risks of long-term storage due to impurities co-disposed with the CO2, and recommending that the amendment require that CO2 streams to be sequestered consist of 99.9% CO2.

18. The carefully crafted resolution accompanying the amendment was a key factor in the amendment's adoption. Among other things, the resolution instructs the London Convention Scientific Group (which also serves the London Protocol), in accordance with detailed Terms of Reference, to develop guidance for the assessment of CO2 sequestration in sub-seabed geological formations. The Scientific Group will work to develop this guidance at a special meeting in April in Oslo, Norway. The resulting guidelines will then be finalized at the annual meeting of the Scientific Group in Spain in June 2007, with a view to their adoption at the Second Meeting of Contracting Parties in London in November 2007.

19. The Amendment took effect on February 10, 2007, 100 days after the agreement in London.

110. Compliance Mechanism - Some progress was made on the London Protocol's compliance mechanism and related procedures, which have been under discussion for some time and need to be in place by March 2008. Most significantly, the chair of the meeting offered a

proposal that was met with agreement by parties, which established a small compliance group of nominated experts, with the opportunity for significant involvement for observers. While the United States had been pushing for an open-ended working group to allow for transparency and robust participation, we did not speak out against the chair's proposal, in part because we were able to get initial agreement for a 15 member group and also because of the sense that observers would be able to fully participate in the meetings of the group. The other main focus of discussion surrounded which entities would be able to bring compliance matters to the compliance group. Agreement was reached that a Party could bring a compliance matter about itself directly to the compliance group. A more controversial issue was whether a Party could bring a concern about another Party's compliance directly to the group or whether it had to go through the Meeting of Contracting Parties. The U.S. supports an option that would allow such a matter to be brought directly to the compliance group if the Party about which the compliance matter has been raised agrees. Otherwise it would go through the Meeting of Contracting Parties. The group working on this compliance mechanism will convene November 1-2, 2007, two days before the next Meeting of Contracting Parties. The Protocol requires the mechanism and procedures to be in place two years after entry into force (March 08).

¶11. Placement (for Purpose Other Than Disposal) - An ongoing discussion within the London Convention concerns the placement of material into the ocean for purposes other than disposal of that material, e.g. the creation of artificial reefs. Greenpeace International delivered a paper asserting that the creation of an artificial reef out of ex-USS ORISKANY (a former U.S. Navy aircraft carrier) near the Florida coast violated U.S. obligations under the London Convention. Article III(1)(b)(ii) of the Convention states that dumping does not include placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of the Convention. Greenpeace claims that creation of the reef was contrary to the aims of the Convention because the ex-ORISKANY had approximately 700 pounds of PCBs on board when it was placed on the ocean floor. This position did not receive any support or other reaction from London Convention Parties or other observers when the paper was delivered.

LONDON 00000894 003 OF 004

¶12. The United States responded that the U.S. Navy was required to clean and prepare the vessel in accordance with the Best Management Practices Guidance document developed jointly by the U.S. Environmental Protection Agency (EPA) and the U.S. Maritime Administration. Extensive studies performed by the Navy and reviewed by EPA led the USG to conclude that appropriate actions were implemented to effectively control any sources of marine pollution and to safeguard the environment. In response to follow-up questions from Greenpeace and Spain, the United States stated that it will make national authorities responsible for the reefing program aware of the exchange of views at the London Convention meeting.

¶13. Scientific Work Group Issues and Actions - The London Convention has a Scientific Group that meets each spring and works interessionally on understanding the technical issues of ocean dumping. The Parties to the London Protocol decided to establish a Scientific Group that will meet concurrently with the London Convention's Scientific Group with the understanding that at future Scientific Group meetings the offices of Chair and Vice-Chair would consist of members representing both Parties to the Protocol and to the Convention. The Chair of the existing (London Convention) Scientific Group provided an overview of the 29th session of the Scientific Group (held in June 2006), and the meeting adopted the recommendations of this 29th Scientific Group session.

¶14. Topics discussed included development of action lists for dredged material, administration of a questionnaire for developing countries, and the status of the Scientific Group's ongoing development of Specific Guidelines for the Assessment of Carbon Dioxide Streams for Disposal into Sub-seabed Geological Formations. The Scientific Group will hold an intersessional technical working group meeting on CO2 sequestration in sub-seabed geological

formations in Oslo, Norway, April 17-20, 2007.

¶15. The London Convention parties noted the Scientific Group's efforts to administer a brief questionnaire for developing countries during the period July 2006 - March 2007. The questionnaire is aimed at identifying suitable distribution or marketing mechanisms for the Protocol's "Waste Specific Guidelines", with a view to submitting a full report on its outcome, for review by the Scientific Group at its spring 2007 session. The Scientific Group will hold its next meeting June 18-22, 2007, in Spain.

¶16. Other Miscellaneous Issues - Other agenda items discussed at the London meetings included strategies to improve reporting of ocean disposal, relations with and outreach to other organizations, and technical cooperation and assistance. The meeting discussed an ongoing collaboration through a correspondence group between the London Convention/Protocol and the IMO's Marine Environment Protection Committee on clarifying boundary issues between the London Convention/Protocol and MARPOL Annex V. Various technical cooperation projects were noted, including technical assistance to South Africa to improve its compliance with the London Protocol, and a workshop that took place in China last spring on preventing marine pollution and environmental management in ports. The meeting discussed several outreach activities to raise the profile of the London Protocol and to encourage additional countries to join it, such as workshops on the Protocol sponsored by the UNEP Regional Seas Programme.

¶17. Elections and Meeting Dynamics - This combined London Protocol and London Convention meeting was ably chaired by Mr. Victor Escobar of Spain, who was particularly effective in guiding the meeting through the discussions on the carbon sequestration amendment. The First Vice-Chair, Ms. Chen Yue from China, did not take an active role and seemed content to let Mr. Escobar manage the leadership of the meeting. Mr. Escobar and Ms. Chen were unanimously re-elected as Chair and First Vice Chair, respectively, for the intersessional period and the next meetings of the London Convention and London Protocol, which will be held November 5 to 9, 2007, in London. As no candidates have been nominated for the post of Second Vice Chair, the Secretariat will approach possible nominees via appropriate channels and prepare a shortlist of candidates, focusing on candidates from developing countries, for consideration by member states before the next meetings.

¶18. Comment - The first Meeting of Contracting Parties to the London Protocol was an important milestone in global efforts to protect the marine environment. The amendment to allow carbon

LONDON 00000894 004 OF 004

sequestration in sub-seabed geological formations was particularly significant for the United States. Although we are not yet a Party (and therefore were not eligible to vote), we still strongly supported the Australian proposal that was ultimately successful. The fact that the Protocol Members were able to debate, discuss and come to agreement on this amendment demonstrates the Protocol's flexibility in being able to meet changing demands and future challenges for the better protection of the marine environment. Despite Greenpeace International's claim that the United States was acting contrary to the aims of the London Convention through the U.S. Navy's artificial reef program, the U.S. delegation's explanation of our careful precautions taken to safeguard the environment seemed to satisfy the other delegations. Although there was potential for this to be an awkward issue for the United States, none of the other delegations seemed interested in supporting Greenpeace or prolonging discussions on the topic. The Department and other agencies are now in the process of preparing a ratification package for the 1996 Protocol, with plans to submit it to the White House for transmittal to the Senate for ratification in the near term. U.S. membership in the Protocol will affirm our leadership role in international efforts to control marine pollution and protect the environment of the world's oceans.

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